

2009 DRAFTING REQUEST

Bill

Received: **09/23/2009**

Received By: **emueller**

Wanted: **As time permits**

Identical to LRB:

For: **Pat Kreitlow (608) 266-7511**

By/Representing: **Matt Pagel**

This file may be shown to any legislator: **NO**

Drafter: **emueller**

May Contact:

Addl. Drafters:

Subject: **Local Gov't - 1st class cities**
 Local Gov't - counties
 Local Gov't - munis generally
 Local Gov't - zoning

Extra Copies: **MES**

Submit via email: **YES**

Requester's email: **Sen.Kreitlow@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Changes to smart growth, comprehensive planning.

Instructions:

See attached.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/P2	emueller 12/29/2009	wjackson 12/29/2009	mduchek 12/29/2009	_____	sbasford 12/29/2009		S&L

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/P4	emueller 02/18/2010	kfollett 02/18/2010	jfrantze 02/19/2010	_____	mbarman 02/19/2010		S&L
/1	emueller 03/01/2010	nnatzke 03/05/2010	rschluet 03/05/2010	_____	sbasford 03/05/2010	cduerst 03/05/2010	

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Instructions:

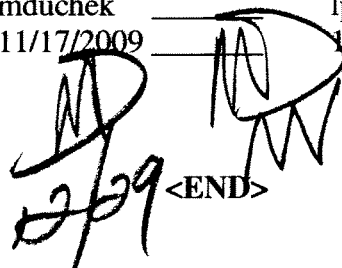
See attached.

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FE Sent For:

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DRAFT 2/2/09

66.1001 Comprehensive Planning.

(1) DEFINITIONS. In this section:

(a) "Comprehensive plan" means:

1. For a county, a development plan that is prepared or amended under s. 59.69(2) or (3).
2. For a city or a village, or for a town ~~that exercises village powers under 60.22(3), a~~ master plan that is adopted or amended under s. 62.23(2) or (3).
3. For a regional planning commission, a master plan that is adopted or amended under s. 66.0309(8), (9) or (10).

~~[Option 1] 4. The comprehensive plan is a guide to the physical, social, and economic development of a local governmental unit. The adoption of the comprehensive plan by ordinance or resolution does not make a comprehensive plan itself a regulation. A comprehensive plan takes affect through those actions that must be consistent with the comprehensive plan.~~

(b) "Local governmental unit" means a county, city, village, town or regional planning commission that may adopt, prepare or amend a comprehensive plan.

(c) "Political subdivision" means a city, village, town, or county that may adopt, prepare, or amend a comprehensive plan.

(2) CONTENTS OF A COMPREHENSIVE PLAN. A comprehensive plan shall contain all of the following elements:

...

(i) *Implementation element.* A compilation of programs and specific actions to be completed in a stated sequence, including proposed changes to any applicable zoning ordinances, official maps, or subdivision ordinances, to implement the objectives, policies, plans and programs contained in pars. (a) to (h). The element shall describe how each of the elements of the comprehensive plan will be integrated and made consistent with the other elements of the comprehensive plan, and shall include a mechanism to measure the local governmental unit's progress toward achieving all aspects of the comprehensive plan. The element shall include a process for updating the comprehensive plan. A comprehensive plan under this subsection shall be updated no less than once every 10 years.

(3) ~~ORDINANCES ACTIONS, PROCEDURES~~ THAT MUST BE CONSISTENT WITH COMPREHENSIVE PLANS. Beginning on January 1, 2010, if a local governmental unit ~~has engages in~~ any of the following ~~actions~~ ordinances, those ~~actions~~ ordinances shall be consistent with that local governmental unit's comprehensive plan:

- (g) Official mapping ordinances enacted ~~established~~ or amended under 62.23(6).
- (h) Local subdivision ~~regulation~~ ordinances enacted or amended under s. 236.45 or 236.46.
- (j) County zoning ordinances enacted or amended under s 59.69.
- (k) City or village zoning ordinances enacted or amended under s. 62.23(7).
- (l) Town zoning ordinances enacted or amended under s. 60.61 or 60.62.
- (q) ~~Zoning of sShorelands~~ or wetlands in shorelands zoning ordinances enacted or amended under s. 59.692, 61.351 or 62.231.

The beginning date of the consistency requirement may be extended to January 1, 2012, if a local governmental unit will not be able to adopt its comprehensive plan by January 1, 2010, and prior to January 1, 2010, the governing body of that local governmental unit passes a resolution stating that the local governmental unit intends to adopt a comprehensive plan by a specific date no later than January 1, 2012.

DRAFT 2/2/09

Any aggrieved person alleging that one of the above referenced ordinances is not consistent with a local governmental unit's comprehensive plan must first provide written notice of the alleged inconsistency with the clerk of the local governmental unit.

Within 30 days of the receipt of the notice, the plan commission for the local governmental unit shall prepare and submit to the governing body a written report to the governing body regarding the consistency of the ordinance with the local comprehensive plan. The written report shall be advisory to the governing body. The written report shall state whether or not, in the opinion of the plan commission, the ordinance is consistent with the local comprehensive plan. The plan commission shall find that a ordinance is consistent with the local comprehensive plan when the ordinance furthers, or at least does not contradict, the goals and policies contained in the local comprehensive plan.

If the plan commission determines that the ordinance is not consistent with the local comprehensive plan, the written report shall:

- (a) state what changes or revisions in the ordinance is necessary to make it consistent; or
- (b) state what amendments to the local comprehensive plan are necessary to eliminate any inconsistency between the plan and the ordinance.

Within 30 days following receipt of the written report, the governing body of the local government shall review the report and: (a) adopt the report; (b) reject the report; or (c) revise the report. If the governing body agrees that the ordinance is not consistent with the local comprehensive plan, the governing body will take the necessary actions to revise the ordinance or the comprehensive plan.

Determinations of consistency by local governments following this process will be given great deference by the courts.

(4) PROCEDURES FOR ADOPTING COMPREHENSIVE PLANS. A local governmental unit shall comply with all of the following before its comprehensive plan may take effect:

(a) The governing body of a local governmental unit shall adopt written procedures that are designed to foster public participation, including open discussion, communication programs, information services and public meetings for which advance notice has been provided, in every stage of the preparation of a comprehensive plan. The written procedures shall provide for wide distribution of proposed, alternative or amended elements of a comprehensive plan and shall provide an opportunity for written comments on the plan to be submitted by members of the public to the governing body and for the governing body to respond to such written comments. The written procedures shall describe the methods the governing body of a local governmental unit will use to distribute proposed, alternative, or amended elements of a comprehensive plan to owners of property, or to persons who have a leasehold interest in property pursuant to which the persons may extract non-metallic mineral resources in or on property, in which the allowable use or intensity of use of the property is changed by the comprehensive plan.

(b) The plan commission or other body of a local governmental unit that is authorized to prepare or amend a comprehensive plan may recommend the adoption or amendment of a comprehensive plan only by adopting a resolution by a majority vote of the entire commission. The vote shall be recorded in the official minutes of the plan commission or other body. The resolution shall refer to maps and other descriptive materials that relate to one or more elements of a comprehensive plan. One copy of an adopted comprehensive plan, or of an amendment to such a plan, shall be sent to all of the following:

1. Every governmental body that is located in whole or in part within the boundaries of the local governmental unit.
2. The clerk of every local governmental unit that is adjacent to the local governmental unit that is the subject of the plan that is adopted or amended as described in par. (b) (intro.).
3. The Wisconsin land council.
4. After September 1, 2003, the department of administration.
5. The regional planning commission in which the local governmental unit is located.
6. The public library that serves the area in which the local governmental unit is located.

(c) No comprehensive plan that is recommended for adoption or amendment under par. (b) may take effect until the political subdivision enacts an ordinance or resolution or the regional planning commission adopts a resolution that adopts the plan or amendment. The political subdivision may not enact an ordinance or resolution or the regional planning commission may not adopt a resolution under this paragraph unless the comprehensive plan contains all of the elements specified in sub. (2). An ordinance may be enacted or a resolution may be adopted under this paragraph only by a majority vote of the members-elect, as defined in s. 59.001 (2m), of the governing body. An ordinance that is enacted or a resolution that is adopted under this paragraph, and the plan to which it relates, shall be filed with at least all of the entities specified under par. (b).

(d) No political subdivision may enact an ordinance or resolution or no regional planning commission may adopt a resolution under par. (c) unless the political subdivision or regional planning commission holds at least one public hearing at which the proposed ordinance or resolution is discussed. That hearing must be preceded by a class 1 notice under ch. 985 that is published at least 30 days before the hearing is held. The political subdivision or regional planning commission may also provide notice of the hearing by any other means it considers appropriate. The class 1 notice shall contain at least the following information:

1. The date, time and place of the hearing.
2. A summary, which may include a map, of the proposed comprehensive plan or amendment to such a plan.
3. The name of an individual employed by the local governmental unit who may provide additional information regarding the proposed ordinance.
4. Information relating to where and when the proposed comprehensive plan or amendment to such a plan may be inspected before the hearing, and how a copy of the plan or amendment may be obtained.

(e) At least 30 days before the hearing described in par. (d) is held, a local governmental unit shall provide written notice to all of the following:

1. An operator who has obtained, or made application for, a permit that is described under s. 295.12(3)(d).
2. A person who has registered a marketable nonmetallic mineral deposit under s. 295.20.
3. Any other property owner or leaseholder who has an interest in property pursuant to which the person may extract nonmetallic mineral resources, if the property owner or leaseholder requests in writing that the local governmental unit provide the property owner or leaseholder notice of the hearing described in par. (d).

(f) A political subdivision shall maintain a list of persons who submit a written request to receive notice of any proposed ordinance, described under par. (c), that affects the allowable use of the property owned

DRAFT 2/2/09

by the person. At least 30 days before the hearing described in par. (d) is held a political subdivision shall provide written notice, including a copy of the proposed ordinance, to all such persons. The notice shall be by mail or in any reasonable form that is agreed to by the person and the political subdivision. The political subdivision may charge each person on the list who receives a notice a fee that does not exceed the approximate cost of providing the notice to the person.

(5) **APPLICABILITY OF A REGIONAL PLANNING COMMISSION PLAN.** A regional planning commission's comprehensive plan is only advisory in its applicability to a political subdivision and a political subdivision's comprehensive plan.

(6) **COMPREHENSIVE PLAN MAY TAKE EFFECT.** Notwithstanding sub. (4), a comprehensive plan, or an amendment of a comprehensive plan, may take effect even if a local governmental unit fails to provide the notice that is required under sub. (4)(e) or (f), unless the local governmental unit intentionally fails to provide the notice.

#####

236.13 Basis for approval.

236.13(1) Approval of the preliminary or final plat shall be conditioned upon compliance with:

- (a) The provisions of this chapter;
- (b) Any municipal, town or county ordinance;
- (c) ~~A comprehensive plan under s. 66.1001 or, if the municipality, town, or county does not have a comprehensive plan, either of the following:~~
 - ~~1. With respect to a municipality or town, a master plan under s. 62.23.~~
 - ~~2. With respect to a county, a development plan under s. 59.69.~~
- (d) The rules of the department of commerce relating to lot size and lot elevation necessary for proper sanitary conditions in a subdivision not served by a public sewer, where provision for public sewer service has not been made;
- (e) The rules of the department of transportation relating to provision for the safety of entrance upon and departure from the abutting state trunk highways or connecting highways and for the preservation of the public interest and investment in such highways.

Mueller, Eric

From: Pagel, Matt
Sent: Monday, August 10, 2009 3:14 PM
To: Mueller, Eric; Shovers, Marc
Subject: Smarth Growth Comprehensive Planning updates

Attachments: Explanation of Amendments.pdf; Proposed amendments.pdf



Explanation of
Amendments.pdf



Proposed

Amendments.pdf ...endments.pdf (111

The senator met with the towns, realtors, villages and others who were involved in the original smart growth and this was some consensus changes that they had agreed upon that we said we would look at getting drafted. Can you let me know if you see needless or problems with the draft language, thanks.

Matthew Pagel
Office of Senator Pat Kreitlow
Wisconsin State Senate - 23rd District
Room 10 South - State Capitol
PO Box 7882
Madison, WI 53703-7882
Phone: 608-266-7511 or 888-437-9436
Matt.Pagel@legis.wisconsin.gov

**Wisconsin's Comprehensive Planning Law
Possible Amendments**

August 7, 2009

1. **Towns Without Village Powers:** Modify the comprehensive planning law to enable, but not require, towns without village powers to adopt comprehensive plans. Because towns without village powers do not have zoning or subdivision ordinances, there would be no consistency requirement applicable to these comprehensive plans.
 - a. Strike – “that exercises village powers under 60.22(3)” from 66.1001(1)(a)(2)
2. **Clarify that Comprehensive Plans Are Advisory** – Clarify comprehensive plans are advisory in nature and do not create regulatory requirements independent from other requirements. Some confusion has resulted by the fact that comprehensive plans must be adopted by ordinance and that zoning regulations have to be consistent with comprehensive plans.
 - a. Change 66.1001(1)(a)(3) to state – “The comprehensive plan is a guide to the physical, social, and economic development of a local governmental unit. The adoption of the comprehensive plan by ordinance does not make a comprehensive plan itself a regulation.”
3. **Define “consistency”** – Under the law, all zoning and subdivision regulations must be consistent with a comprehensive plan. However, “consistency” is not defined. As a result, considerable litigation will likely occur to define the meaning of the consistency, which will create tremendous uncertainty for local communities and property owners trying to use their property in accordance with the comprehensive plan.
 - a. Add – “Consistent with” means “further, or at least does not contradict, the goals and policies contained in the local comprehensive plan.”
4. **Clarify what must be consistent with the comprehensive plan** – Under current law, confusion exists as to what actions must be consistent with the comprehensive plan and with which parts of the plan these actions must be consistent. For example, if a community makes a zoning change, does the zoning change have to be consistent with the land use map, the housing element, the economic development element, or every word of every section of the plan. Because plans are supposed to be visionary, rather than regulatory, in nature, this could present tremendous confusion.
 - a. Clarify that only the ordinances have to be consistent with the comprehensive plan.
 - b. Create an appeal process at the local level to allow the community an opportunity to review and address challenges to the consistency requirement
 - c. Emphasize that local decisions under the comprehensive plan are to be given great deference by the courts. (We believe this is current law.)
5. **Consistency with Subdivision Law** – Under current subdivision law (ch. 236), approval of plats must be conditioned upon, among other things, “compliance

with" a comprehensive plan. "Compliance with" is possibly a different legal standard than "consistent with" and could result in confusion. Moreover, because zoning and subdivision ordinances are the regulations that must be consistent with a comprehensive plan (see above) under the comprehensive planning law, references to the comprehensive plan should be deleted to avoid confusion.

- a. Delete reference to the comprehensive plan from the list of items with which subdivision plats must be consistent

- Tom Larsen w/ WRA 608 212 0066
tlarsen@wra.org

- "consistent" is necessary

- admin review procedure can be altered - not nec.
to be quasi-judicial, but provide forum & decision

9/23 Matt @ Sen Kreitzer

- go forward w/ drafting based on emailed docs
and conversation w/ Tom Larsen



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-3520/P1

EVM:...

DNote

kyf
RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

In 11/9/08

Soon

910

1 AN ACT ...; relating to: comprehensive planning.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

For further information see the **local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 59.69 (3) (a) of the statutes is amended to read:

3 59.69 (3) (a) The county zoning agency may direct the preparation of a county
4 development plan or parts of the plan for the physical development of the
5 unincorporated territory within the county and areas within incorporated
6 jurisdictions whose governing bodies by resolution agree to having their areas
7 included in the county's development plan. The plan may be adopted in whole or in
8 part and may be amended by the board and endorsed by the governing bodies of
9 incorporated jurisdictions included in the plan. The county development plan, in

1 whole or in part, in its original form or as amended, is hereafter referred to as the
2 development plan. Beginning on January 1, 2010, or, if the county has adopted a
3 resolution under s. 66.1001 (7), January 1, 2012, if the county engages in any
4 program or action described in s. 66.1001 (3), the development plan shall contain at
5 least all of the elements specified in s. 66.1001 (2).

History: 1971 c. 40 s. 93; 1971 c. 86, 224; 1973 c. 274; 1977 c. 205; 1979 c. 233 ss. 2 to 5, 7 and 8; 1979 c. 323; 1981 c. 341, 354, 374; 1983 a. 192 s. 303 (1); 1983 a. 410; 1983 a. 532 s. 36; 1985 a. 29, 136, 196, 281, 316; 1987 a. 161, 395; 1989 a. 80, 201; 1991 a. 255, 269, 316; 1993 a. 16, 27, 246, 327, 400, 446, 491; 1995 a. 27 ss. 9130 (4), 9126 (19); 1995 a. 201 s. 475; Stats. 1995 s. 59.69; 1995 a. 225 s. 174; 1995 a. 227; 1997 a. 3, 35; 1999 a. 9, 148, 185; 2001 a. 16, 30, 50, 105; 2003 a. 214; 2005 a. 26, 79, 81, 112, 171, 208; 2007 a. 11; 2007 a. 20 ss. 1852 to 1857, 9121 (6) (a); 2009 a. 28.

6 **SECTION 2.** 62.23 (3) (b) of the statutes is amended to read:

7 62.23 (3) (b) The commission may adopt the master plan as a whole by a single
8 resolution, or, as the work of making the whole master plan progresses, may from
9 time to time by resolution adopt a part or parts of a master plan. Beginning on
10 January 1, 2010, or, if the city has adopted a resolution under s. 66.1001 (7), January
11 1, 2012, if the city engages in any program or action described in s. 66.1001 (3), the
12 master plan shall contain at least all of the elements specified in s. 66.1001 (2). The
13 adoption of the plan or any part, amendment, or addition, shall be by resolution
14 carried by the affirmative votes of not less than a majority of all the members of the
15 city plan commission. The resolution shall refer expressly to the elements under s.
16 66.1001 and other matters intended by the commission to form the whole or any part
17 of the plan, and the action taken shall be recorded on the adopted plan or part of the
18 plan by the identifying signature of the secretary of the commission, and a copy of
19 the plan or part of the plan shall be certified to the common council, and also to the
20 commanding officer, or the officer's designee, of any military base or installation,
21 with at least 200 assigned military personnel or that contains at least 2,000 acres,
22 that is located in or near the city. The purpose and effect of the adoption and

certifying of the master plan or part of the plan shall be solely to aid the city plan commission and the council in the performance of their duties.

History: 1973 c. 60; 1975 c. 281; 1977 c. 205; 1979 c. 221, 355; 1981 c. 289, 341, 354, 374; 1983 a. 49, 410; 1985 a. 136 ss. 7 to 9, 10; 1985 a. 187, 225, 281, 316; 1987 a. 161, 395; 1989 a. 201; 1991 a. 255, 316; 1993 a. 27, 184, 301, 327, 400, 446, 471, 490, 491; 1995 a. 27 ss. 9126 (19), 9130 (4); 1995 a. 225; 1997 a. 3, 35, 246; 1999 a. 9, 148; 1999 a. 150 s. 672; 2001 a. 30 ss. 16, 17, 108; 2001 a. 50; 2005 a. 26, 34, 79, 81, 112, 171, 208; 2007 a. 20 ss. 1868 to 1873, 9121 (6) (a); 2007 a. 72; 2009 a. 28.

SECTION 3. 66.1001 (3) (intro.), (g), (h) and (q) of the statutes are amended to read:

66.1001 (3) ACTIONS, PROCEDURES ORDINANCES THAT MUST BE CONSISTENT MAY NOT BE INCONSISTENT WITH COMPREHENSIVE PLANS. (intro.) Beginning on January 1, 2010, or, if the local governmental unit has adopted a resolution under sub. (7), January 1, 2012, if a local governmental unit engages in has enacted any of the following actions ordinances, those ~~actions shall be consistent~~ ordinances may not be inconsistent with that local governmental unit's comprehensive plan:

History: 1999 a. 9, 148; 1999 a. 150 s. 74; Stats. 1999 s. 66.1001; 1999 a. 185 s. 57; 1999 a. 186 s. 42; 2001 a. 30, 90; 2003 a. 33, 93, 233, 307, 327; 2005 a. 26, 208; 2007 a. 121.

(g) Official mapping established ordinances enacted or amended under s. 62.23 (6).

History: 1999 a. 9, 148; 1999 a. 150 s. 74; Stats. 1999 s. 66.1001; 1999 a. 185 s. 57; 1999 a. 186 s. 42; 2001 a. 30, 90; 2003 a. 33, 93, 233, 307, 327; 2005 a. 26, 208; 2007 a. 121.

(h) Local subdivision ~~regulation~~ ordinances enacted or amended under s. 236.45 or 236.46.

History: 1999 a. 9, 148; 1999 a. 150 s. 74; Stats. 1999 s. 66.1001; 1999 a. 185 s. 57; 1999 a. 186 s. 42; 2001 a. 30, 90; 2003 a. 33, 93, 233, 307, 327; 2005 a. 26, 208; 2007 a. 121.

(q) ~~Zoning of shorelands~~ Shorelands or wetlands in shorelands zoning ordinances enacted or amended under s. 59.692, 61.351 or 62.231.

History: 1999 a. 9, 148; 1999 a. 150 s. 74; Stats. 1999 s. 66.1001; 1999 a. 185 s. 57; 1999 a. 186 s. 42; 2001 a. 30, 90; 2003 a. 33, 93, 233, 307, 327; 2005 a. 26, 208; 2007 a. 121.

SECTION 4. 66.1001 (3m) of the statutes is created to read:

66.1001 (3m) CONSISTENCY REVIEW PROCEDURE. (a) In this subsection, "aggrieved party" means any person whose substantial interests are adversely affected by an alleged inconsistency of an ordinance listed under sub. (3) with a local governmental unit's comprehensive plan.

(b) An aggrieved party has the right to a hearing under par. (e) if the aggrieved party files a written request for a hearing with the local governmental unit containing a short and plain statement describing the alleged inconsistency of the ordinance with the local governmental unit's comprehensive plan.

(c) 1. Within 30 days of receipt of the hearing request, the local governmental unit's plan commission shall prepare and adopt a written report regarding the consistency of the contested ordinance with the local governmental unit's comprehensive plan. The report shall include the plan commission's opinion regarding whether the contested ordinance is inconsistent with the comprehensive plan.

2. If the plan commission finds the contested ordinance is inconsistent with the comprehensive plan, the written report shall include all of the following:

a. A statement regarding changes to the contested ordinance that are necessary to make the ordinance not inconsistent with the plan.

b. A statement regarding changes to the comprehensive plan that are necessary to make the ordinance not inconsistent with the plan.

3. The plan commission shall provide a copy of the written report to the governing body of the local governmental unit and the aggrieved party within 30 days of adopting the report.

(d) Within 30 days of receipt of the plan commission's report and not less than 10 days before the hearing, the governing body of the local governmental unit shall provide notice to the aggrieved party of the time, place, and nature of the hearing.

(e) At the hearing, the aggrieved party may present evidence and argument in support of the aggrieved party's position. The local governmental unit shall provide an impartial decision maker who did not participate in making or reviewing the plan

1 commission report. The decision maker may be an officer, committee, board,
2 commission, or the governing body of the local governmental unit. The person
3 conducting the hearing or a person employed for that purpose shall take notes of the
4 testimony and shall mark and preserve all exhibits.

5 (f) Within 30 days of the hearing, the decision maker shall provide the
6 aggrieved party and the local governmental unit with a written decision, including
7 a statement of the reasons for the decision. The decision shall do one of the following:

- 8 1. Adopt the report of the plan commission.
- 9 2. Reject the report of the plan commission.
- 10 3. Revise and adopt the revised report of the plan commission. ✓

11 (g) If the decision under par. (f) includes a determination that the contested
12 ordinance is inconsistent with the comprehensive plan, the local governmental unit
13 shall amend the contested ordinance or the comprehensive plan within a reasonable
14 time.

15 (h) Any party to a proceeding under this subsection may seek judicial review ✓
16 of the final determination of the governing body of the local governmental unit by
17 certiorari within 30 days of receipt of the final determination. ✓

18 **SECTION 5.** 66.1001 (7) of the statutes is created to read:

19 66.1001 (7) EXTENSION OF TIME TO COMPLY. If a local governmental unit adopts
20 a resolution stating that the local governmental unit is unable to enact a
21 comprehensive plan before January 1, 2010, and that the local governmental unit
22 intends to enact a comprehensive plan no later than January 1, 2012, sub. (3) ✓ does
23 not apply to that local governmental unit until January 1, 2012.

24 **SECTION 6.** 236.13 (1) (c) of the statutes is repealed. ✓

25 (END)

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3520/P1dn

EVM:..

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Date

ATTN: Sen. Pat Kreitlow

Please review the attached draft carefully to ensure that it is consistent with your intent. The following are several issues you may wish to consider in reviewing this draft.

1. The most significant change from the proposed language is the creation of a local review procedure for parties aggrieved by the alleged inconsistency of a covered ordinance with the comprehensive plan. The procedure may be more involved than desired, but I believe many of the elements I have added are necessary to ensure significant deference by the courts to local determinations regarding consistency. Please let me know if you want portions of the procedure removed or otherwise altered.

that Generally, I have attempted to retain most elements of the provided language, but added further requirements, generally adapted from either ch. 68 or 227, stats., to make the procedure workable and more likely to accomplish the intended effect. In brief, my additions are designed to provide basic due process protections to the aggrieved party, and, thereby, to ensure the local governing body's determination is sufficiently informed and formal to be given deference by the courts. I added the certiorari review requirement because this sort of review will require the court to limit its review to the final determination of the governing body and do so under a deferential standard.

X Specifically, I retained the concept of planning commission review and recommendation and the governing body's action upon that recommendation as the final decision. To this I added: 1) a specific aggrieved party standard; 2) more specificity regarding the initiation of review; 3) various time limits; 4) a notice of hearing requirement; 5) several due process hearing requirements including the right of an aggrieved party to present evidence and argument and an impartial decision maker; 6) a record keeping requirement; 7) a written decision requirement; and 8) certiorari review of the final decision. Please let me know if you want any changes to the procedure.

2. I have not included any language indicating that a comprehensive plan is only advisory or not a regulation simply by being enacted as an ordinance. I believe adding such language would be more likely to create, rather than avoid, ambiguity. It is clear from the current statute that comprehensive plans do have some regulatory effect, a

the
X separate statutory provision denying the intent to have regulatory effect could create a conflict. Also, including language that an ordinance enacting a comprehensive plan does not make the comprehensive plan a regulation may have unpredictable effects depending upon the form of ordinance passed by the local governmental unit. For example, a local governmental unit may intend for an ordinance enacting a comprehensive plan to have effects beyond those imposed by s. 66.1001 (3), stats. A provision indicating that an ordinance enacting a comprehensive plan does not have regulatory effect may render the ordinance ambiguous.

If there is some confusion regarding the effect of the comprehensive plan on local ordinances or regulations, perhaps some clarifying changes could be made to the substantive portions of s. 66.1001, stats.

3. The changes to s. 66.1001 (3) (g), (h), and (q) may have the effect of creating a loophole for local governments who wish to make certain changes without ensuring their consistency with the comprehensive plan. For example, official maps of a city may be established by ordinance or resolution under s. 62.23 (6) (b), stats. If s. 66.1001 (3) (g) is changed to only apply to official mapping ordinances, a city may establish an official map of the city by resolution to avoid the necessity of complying with its comprehensive plan. Please let me know if you want any changes to this section.

4. I omitted the requested change to s. 66.1001 (1) (a) (2) because this change, as currently worded, will not have any significant effect. Under current statutes, a town does not have authority to exercise powers, including adopting a master plan, under s. 62.23, stats., absent the exercise of village powers under s. 60.22 (3), stats., which cannot be exercised absent the authorization of the town meeting under s. 60.10 (2) (c), stats. Therefore, the words removed in the provided language would not permit a town to adopt a master plan in any situation not currently permitted.

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If you wish to broaden the powers of a town regarding the adoption of a master plan, please consider how you would like to accomplish this. One option is to simply remove the requirement that exercise of village powers be authorized by the town meeting. Under this option, a town could simply opt to exercise village powers, including acting under s. 62.23, stats. Another option is to create a parallel comprehensive planning statute for inclusion in the town's chapter. Yet another option is to simply permit towns, with or without approval of the town meeting, to act under 62.23, stats. This final option, however, may not be different in any significant way from the status quo.

5. Rather than define "consistency" for purposes of the review process, I changed the standard in s. 66.1001 (3), stats., to "not inconsistent." Please let me know if you want this changed.

6. I treated ss. 59.69 (3) (a) and 62.23 (3) (b), stats., to conform these statutes to this draft. Please let me know if these changes are not what you intend.

7. I omitted the changes to ss. 66.1001 (4) (c) and (d), stats., that appeared in the document labeled DRAFT 2/2/09. These changes were not mentioned in the August 7, 2009, memo and it is unclear to me what was the intent for these changes. Though statutory law does not provide any specific requirements, ordinances are generally

used for matters of a general and permanent nature and resolutions are generally used for matters that are temporary or of limited applicability. It appears that the adoption of a master plan is both generally applicable and permanent. Please let me know if you want the changes from the proposed language added to this draft.

8. I have not provided any initial applicability or effective dates. Please let me know if you believe any are needed.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "/1" draft.

Eric V. Mueller
Legislative Attorney
Phone: (608) 261-7032
E-mail: eric.mueller@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3520/P1dn
EVM:kjf:md

November 16, 2009

ATTN: Sen. Pat Kreitlow

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